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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,181	07/25/2003	George N. Kringel	03946-P0001A	3863
24126	7590	09/22/2004	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			MORRISON, NASCHICA SANDERS	
		ART UNIT		PAPER NUMBER
				3632

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/627,181	KRINGEL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Naschica S Morrison	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 July 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) 4 and 18 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3,5-17 and 19-40 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 25 July 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 72503.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

**DETAILED ACTION**

This is the first Office Action for serial number 10/627,181, Product Display Device, filed on July 25, 2003. Claims 1-40 are pending.

***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I according to Figs. 1-12 and Species II according to Figs. 13-15.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 3, 6-13, 16, 17, 19, 21, 22, 25-28, 30-32, and 35-38 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Richard Basile on 9/3/04 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-3, 5-17, and 19-40. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4 and 18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

The disclosure is objected to because of the following informalities: in paragraph [0007], on line 2 insert --a-- before "store"; in paragraph [0013], on line 3 "use at" should be --use on--; in paragraph [0048], on line 2 " 48' " should be --22'--. Appropriate correction is required.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the shelf and pole

(recited in claims 11, 12, etc.) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: on line 7, insert --,-- after "tension". Appropriate correction is required.

Claim 19 is objected to because of the following informalities: on line 9, insert --,-- after "tension". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 7-17, and 19-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10, 11, 12, 16, 17, 25-28, 33 and 35-37 are rejected because it is unclear whether the combination of the device and the container or the device and support is being claimed or merely the subcombination of the device. Claims 1, 10, 16, 27, 33 and 35 recite the container and/or shelf in a functional statement, indicating the subcombination is being claimed, yet the applicant recites a further structural limitation to the container and/or shelf in claim 1 (line 7), 10 (line 5), 11 (line 1), 12 (line 1), 16 (line 7), 17 (line 1), 25 (lines 1 & 2), 26 (lines 1 & 2), 27 (line 6), 28 (line 1), 33 (line 6), 35 (line 5), 36 (line 1) and 37 (line 1), indicating the combination is being claimed. Also, please see all depending claims for similar problems. For purposes of this Office action, the examiner will assume the ***subcombination*** is being claimed.

Regarding Claim 13, line 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if “a base” in claim 13, line 1 is intended to refer to “a base” in claim 10, line 3.

Regarding Claim 14, line 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the

originally cited terms. It is unclear if “a back member” in claim 14, line 1 is intended to refer to “a back member” in claim 10, line 4.

Regarding Claim 23, line 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if “a back member” in claim 23, line 1 is intended to refer to “a back member” in claim 21, line 3.

Regarding Claim 24, line 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if “a tensioner” in claim 24, line 1 is intended to refer to “a tensioner” in claim 21, line 6.

Regarding Claim 30, line 2 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if “a base” in claim 30, line 2 is intended to refer to “a tensioner” in claim 27, line 3.

Regarding claim 31, line 2 describes the retaining member as being a rigid container gripper; however it is not clear how the retaining member (20) is considered to be rigid.

Regarding Claim 34, line 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if “a back member” in claim 34, line 1 is intended to refer to “a back member” in claim 33, line 4.

Regarding Claim 39, line 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a back member" in claim 39, line 1 is intended to refer to "a back member" in claim 35, line 4.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-29, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,547,014 to Bantel. Regarding claims 27-29, 31 (as best understood) and 32, Bantel discloses a device comprising: a base (11 generally) defining an area for retaining a container (shown in phantom in Fig. 3) and having a bottom wall (at 11); a back member (10) extending upwardly from said base and having an adjustable tensioner (17, 19) and retaining member (18); the retaining member (18) comprising a flexible loop (18) adapted to be coupled to the dispensing container and to the tensioner to enable an adjustment of the tensioner to bias the container in a downward direction and against the back member; wherein the tensioner comprises a slider (17) and a back bracket (13) moveable relative to each other and a hook (19) attached to the slider.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-17, 19, 21-26, 30, and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bantel in view of U.S. Patent 3,177,048 to Whatley. With regards to claims 1-3, 5, 7-9, and 30, Bantel discloses the device as applied above but does not teach the bottom wall including a protuberance. Whatley teaches a device comprising a base (10 generally) having a bottom wall (20) with two protuberances (22), wherein each protuberance has an upper portion (at 22) and a lower portion with the lower portion being closer to a back wall (16) than the upper portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the bottom wall of the base of Bantel to include protuberances because one would have been motivated to provide a means for catching and holding drippings or spillage from the container as taught by Whatley (col. 2, lines 48-50). Regarding claim 6, Bantel does not teach the base being removable from the back member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the base of Bantel to be removably connected to the back member because one would have been motivated to provide a holder that may be disassembled and stored in a flattened configuration. Regarding claims 10-17, 19 and 33-40, Bantel does not teach the device including a connector engaged with the back

member (10). Whatley further teaches a connector (36) engaged with the back wall/member (16) for attaching the device to a support. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Bantel to include a connector engaged with the back member because one would have been motivated to provide a suitable means for mounting the device on a wall surface as taught by Whatley (col. 2, lines 38-40). Regarding claims 21-26, the method steps recited therein are deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bantel in view of Whatley and further in view of U.S. Patent 6,612,057 to Shoemaker et al. (Shoemaker). With regards to claim 20, Bantel in view of Whatley discloses the device as applied above, but Bantel does not teach the device including marketing material in the back member (10). Shoemaker teaches a device comprising marketing material (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the back member of Bantel to include marketing material therein because one would have been motivated to provide a means for displaying advertisements as taught by Shoemaker.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

583521 to Walsh; 1295120 to Cartre; 1549155 to Schwab et al;

1966648 to Ryberg; 2554875 to Okunami; 2734711 to Shippen;  
2754078 to Koger et al; 3365228 to Hay; 3429542 to Fagan;  
4071976 to Chernewski; 5320319 to Winger et al

The above references disclose support devices relevant to the present invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.

  
*Naschica S. Morrison*  
Patent Examiner  
Art Unit 3632  
9/15/04

  
RAMON O. RAMIREZ  
PRIMARY EXAMINER